



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Release Number: **201445016**

Release Date: 11/7/2014

UIL Code: 501.15-00

Date: 8/14/2014

Employer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

Voice

Fax

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Dear :

In a determination letter dated in 20XX, you were held to be exempt from Federal income tax under section 501(c)(15) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(15) of the Code. Accordingly, your exemption from Federal income tax is revoked effective January 1, 20XX. This is a final adverse determination letter with regard to your status under section 501(c)(15) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On February 6, 20XX, you signed Form 6018-A, *Consent to Proposed Action*, agreeing to the revocation of your exempt status under section 501(c)(15) of the Code.

You have filed taxable returns on Form 1120, *U.S. Corporation Income Tax Return*, for the year ended December 31, 20XX with us. For future periods, you are required to file Form 1120 with the appropriate service center indicated in the instructions for the return.

You have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets

prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

**Taxpayer Advocate Service**

If you have any questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

Sunita Lough  
Director, EO Examinations



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

December 16, 2008

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Dear :

We have enclosed a copy of our report of examination explaining why we believe an adjustment of your organization's exempt status is necessary.

We have also enclosed Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues, and Publication 3498, *The Examination Process*. These publications include information on your rights as a taxpayer, including administrative appeal procedures within the Internal Revenue Service.

If you request a conference with Appeals, we will forward your written statement of protest to the Appeals Office, and they will contact you. For your convenience, an envelope is enclosed. If you and Appeals do not agree on some or all of the issues after your Appeals conference, the Appeals Office will advise you of its final decision.

If you elect not to request Appeals consideration but instead accept our findings, please sign and return the enclosed Form 6018-A, *Consent to Proposed Adverse Action*. We will then send you a final letter modifying or revoking your exempt status under I.R.C. § 501(c)(15). If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and send a final letter advising of our determination.

In either situation outlined in the paragraph above (execution of Form 6018-A or failure to respond within 30 days), you are required to file federal income tax returns for the tax

period(s) shown above, for all years still open under the statute of limitations, and for all later years. File the federal tax return for the tax period(s) shown above with this agent within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance.

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

***Vicki L. Hansen*** by M.E.B.

Vicki L. Hansen  
Acting Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Form 6018-A  
Report of Examination  
Envelope

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

## **ISSUES**

1. Does \_\_\_\_\_ qualify as an insurance company under Internal Revenue Code Section 501(c)(15), for the years beginning January 1, 20XX?
2. If \_\_\_\_\_ did not qualify as an insurance company under Internal Revenue Code Section 501(c)(15), can \_\_\_\_\_ rely on the determination letter granted by the Service allowing it to claim tax exempt status pursuant to Internal Revenue Code Section 501(c)(15)?
3. If \_\_\_\_\_ cannot rely on the determination letter granted by the Service allowing it to claim tax exempt status pursuant to Internal Revenue Code Section 501(c)(15), is it entitled to relief under Internal Revenue Code Section 7805(b)?
4. If \_\_\_\_\_ cannot rely on the determination letter granted by the Service allowing it to claim tax exempt status pursuant to under Internal Revenue Code Section 501(c)(15), what is the effective date of the revocation?
5. If \_\_\_\_\_ cannot rely on the determination letter granted by the Service allowing it to claim tax exempt status pursuant to Internal Revenue Code Section 501(c)(15), based on the facts that it does not meet the requirements of an insurance company under Internal Revenue Code Section 501(c)(15), what are the tax consequences?

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

## **FACTS**

was formed in the State of \_\_\_\_\_  
in the 19XX's through Section 56-7-2201, \_\_\_\_\_ Insurance Laws,  
Small Employer Group Health Coverage Reform Act. As part of the formation of  
, a Plan of Operations (PLAN) was developed. The Plan provides:

- Definitions and explanations of the structure, operations procedure and powers of the Pool.
- Definitions of the role and responsibilities of all parties involved: Board of Directors, Administering Carrier and Participating Carrier.
- Definitions of the interpretation of terminology found in the legislation,
- Documentation of the rules of reinsurance operations and procedures.

The PLAN provided the following purposes:

- Promoting the availability of accident and health insurance coverage to small employers
- To provide reinsurance as a mechanism to fairly share the risk.
- To improve the efficiency and fairness of the small group accident and health insurance marketplace

The PLAN states that membership consists of all reinsuring carriers, as defined in \_\_\_\_\_, issuing or providing health benefit plans in this state, (as defined in \_\_\_\_\_)).

A copy of the Application Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, and the determination letter was not provided by the organization. Agent requested a copy of the application form from the EO Determination Records Unit in \_\_\_\_\_ and from the \_\_\_\_\_. Neither location was able to provide a copy. According to the information in the Service's database, \_\_\_\_\_ received tax exempt status under IRC 501(c)15) in 20XX.

\_\_\_\_\_ had no shareholders. There were \_\_\_\_\_ board members. All were selected from \_\_\_\_\_ members. At least one director shall represent a domestic insurance company licensed to transact accident and health insurance. At least \_\_\_\_\_ shall represent Small Employer Carriers. At least \_\_\_\_\_ shall represent an HMO. At least \_\_\_\_\_ shall represent a nonprofit hospital.

During the year under examination, \_\_\_\_\_ did not have any insurance or reinsurance policies in force. No premiums were received. Only income received by the \_\_\_\_\_

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

organization was investment income. assessed its members to help cover expenses, including a loan that was outstanding with a bank.

During the year there were no claims filed or paid. There were no policies for claims to be filed. Only expenses incurred during the year included administrative expenses, interest expense, and some professional fees.

At the beginning of the year, reported \$ as Loss Reserves on its Form 990. In Part II, Statement of Functional Expenses, of Form 990 for 20XX, reported a reduction in expenses by the same amount and labeled it, "Health Benefits Recovered". At the end of 20XX, there were no Loss Reserves reported on Form 990.

Form 990 was filed for the 20XX tax year. The following is a breakdown of the Gross Receipts received by for the year ending December 31, 20XX, and the percentage of Written Premiums to Gross Receipts for the same years.

	20XX
Premiums Written	
Assessments	
Total	
Interest Income	
Total Gross Receipts	
Percentage- Gross Premium/Reinsurance Income to Gross Receipts	

As stated above, was formed in the state of so a 953(d) election to be considered a domestic organization for tax purpose was not filed or applicable.

An election under IRC 831(b) has never been filed. As of the writing of this report, there has never been a filing of the election, either with the filing of the Forms 990 or separately.

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

## **LAW AND ANALYSIS**

1. Does \_\_\_\_\_ qualify as an insurance company under Internal Revenue Code Section 501(c)(15), for the years beginning January 1, 20XX?

As stated above, \_\_\_\_\_ had no participants in the program during the year under examination. No premiums were collected, no claims were filed or payments made. The only activity being conducted by \_\_\_\_\_ was the maintaining of investment accounts and receiving investment income from those accounts. \_\_\_\_\_ did assess its members \_\_\_\_\_ as stated above to help cover administrative costs.

Neither I.R.C. 501(c)(15) nor its corresponding regulations define an "insurance company." Subchapter L of the Code (I.R.C. sections 801-848), however, addresses the taxation of insurance companies. The term "insurance company" has the same meaning under section 501(c)(15) as it does in Subchapter L. See H. Conf. Rep. No. 99-841, 99<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Vol. II) 370-71, reprinted in 1986-3 (Vol. 4) C.B. 370-71.

I.R.C. section 816 (formally I.R.C. section 801) defines a life insurance company. As part of this definition, I.R.C. section 816 provides, "the term 'insurance company' means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies."

Treas. Reg. section 1.801-3(a)(1) defines an insurance company as;

A company whose primary and predominant business activity during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. Thus, though its name, charter powers, and subjection to State insurance laws are significant in determining the business which a company is authorized and intends to carry on, it is the character of the business actually done in the taxable year which determines whether a company is taxable as an insurance company under the Internal Revenue Code.

In this case, \_\_\_\_\_ primary and predominant business activity was not the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. \_\_\_\_\_ was not involved in either of these two activities. Its sole purpose was to collect investment income from the investment accounts.



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

Another aspect to consider in this case is that there are no insurance contracts that provides both risk shifting and risk distribution. In AMERCO & Subsidiaries, 96 T.C. 18 (1991), a case affirmed by the 9<sup>th</sup> Circuit, the Tax Court adopted a three-part test. The three parts consist of; (1) Is the risk an insurance risk?; (2) Is there risk shifting and risk distribution?; and (3) Is there insurance in its generally accepted sense?

Neither the Internal Revenue Code nor the Regulations specifically define the term "insurance contract." The courts have generally required that a transaction involve both risk shifting (from the insured's perspective) and risk distribution (from the insurer's perspective) in order to be characterized as insurance. Helvering v. LeGierse, 312 U.S. 531, 539 (1941); Gulf Oil Corp. v. Commissioner, 914 F.2d 396, 411 (3<sup>rd</sup> Cir. 1990).

Risk shifting occurs when a person facing the possibility of a loss transfers some or all of the financial consequences of the loss to the insurer. Rev. Rul. 88-72, 1988-2 C.B. 31, clarified by Rev. Rul. 89-61, 1989-1 C.B. 75. The risk transferred pursuant to an insurance contract must be a risk of economic loss. Allied Fidelity Corp. v. Commissioner, 66 T.C. 1068 (1976), aff'd., 572 F.2d 1190 (7<sup>th</sup> Cir. 1978), cert. denied, 439 U.S. 835 (1978).

It is exam's position that risk distribution requires both a distribution of exposure units and a distribution of a pool of premiums. In addressing distribution courts have focused on one or the other, but no case has address both.

Risk distribution of exposure units refers to the operation of the statistical phenomenon known as the "the law of large numbers." When additional statistically independent risk exposure units are insured, although the potential total losses increase, there is also an increase in the predictability of average loss. This increase in the predictability of the average loss decreases the amount of the capital that an insurance company needs per risk unit to remain at a given solvency level. See Rev. Rul. 89-61, 1989-1 C.B. 75.

The Courts have not spent a great deal of time explaining what they mean by risk distribution. No court has squarely held that there can be no risk distribution if there is only one, or a few, insureds. A fair reading of the court opinions addressing the issue, however, supports the IRS's position. See Barnes v. United States, 801 F.2d 984, 985 (7<sup>th</sup> Cir. 1986) ("Risk distributing is the spreading of the risk of loss among the participants in an insurance program."). See also, Commissioner v. Treganowan, 183 F.2d 288, 291 (2<sup>nd</sup> Cir. 1950). Such spreading is effectuated by pooling among unrelated insureds. " [R]isk distribution means that the party assuming the risk distributes his potential liability, in part, among others." Beech Aircraft Corp. v. United States, 797 F.2d 920, 922 (10<sup>th</sup> Cir. 1986). Risk distribution is accomplished where the risk is distributed among insureds other than the entity that incurred the loss. See Ross v. Odem, 401 F.2d 464 (5<sup>th</sup> Cir. 1968).

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

The Sixth Circuit touched on the issue of risk distribution in Humana, Inc. v. Commissioner, 881 F.2d 247, 257 (6<sup>th</sup> Cir. 1989), noting that there was adequate risk distribution, "where the captive insures several separate corporations within an affiliated group and losses can be spread among the several distinct corporate entities." The Ninth Circuit has also measured risk distribution by explaining, "[i]nsuring many independent risks in return for numerous premiums serves to distribute risk. By assuming numerous relatively small, independent risks that occur randomly over time, the insurer smoothes out losses to match more closely its receipt of premiums." Clougherty Packing Co. v. Commissioner, 811 F.2d 1297, 1300 (9<sup>th</sup> Cir. 1987)

did not issue or reinsure any policies. Its only activity was collecting investment income from their investment accounts and assessing its members to help cover administrative costs. There was no risk shifting and risk distribution with because had no insurance policies.

Also, to show that was not an insurance company was the lack of reserves to pay claims, and the payment of claims themselves. started the year with reserves but during the year they decreased the reserve amount to zero and reported the amount as a reduction in expenses labeled, "Health Benefits Recovered". The reserves were not needed because there were no claims or potential claims.

Therefore, it is of the Service's position that did not qualify as an insurance company under IRC 501(c)(15). To qualify for tax exempt status under IRC 501(c)(15), an organization must be operating as an insurance company.

2. If did not qualify as an insurance company under Internal Revenue Code Section 501(c)(15), can rely on the determination letter granted by the Service allowing it to claim tax exempt status pursuant to Internal Revenue Code Section 501(c)(15)?

To qualify for tax exempt status under IRC 501(c)(15), an organization must be operating as an insurance company. Since did not qualify as an insurance company it did not qualify for tax exempt status under IRC 501(c)(15), therefore it can not rely on the determination letter granted by the Service allowing it to claim tax exempt status pursuant to IRC 501(c)(15). The organization's tax exemption should be revoked for years beginning January 1, 20XX.

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

3. If **cannot rely on the determination letter granted by the Service allowing it to claim tax exempt status pursuant to Internal Revenue Code Section 501(c)(15), is it entitled to relief under Internal Revenue Code Section 7805(b)?**

An organization may ordinarily rely on a favorable determination letter received from the Internal Revenue Service. Regulations 1.501(a)-1(a)(2); Rev. Proc. 2008-4, 14.02 (cross-referencing 13.01 et seq.) 2008-4 C.B. 121. An organization may not rely on a favorable determination letter, however, if the organization omitted or misstated a material fact, in its application or in supporting documents. In addition, an organization may not rely on a favorable determination if there is a material change, inconsistent with exemption, in the organization's character, purposes, or methods of operation after the determination letter is issued. Regulations 601.201(n)(3)(ii); Rev. Proc. 90-27, 13.02, 1990-1 C.B. 514. Any such changes must be reported to the Service so that continuing recognition of exempt status can be evaluated.

The Commissioner may revoke a favorable determination letter for good cause. Regulations 1.501(a)-1(a)(2). A favorable determination letter may be revoked by written notice to the organization to whom the determination originally was issued. Regulations 601.201(m) (cross-referencing Reg. 601.201(l)); Rev. Proc. 90-27, 14, 1990-1 C.B. 514, 518.

If the Commissioner revokes the tax exempt status of an organization, the remaining question is whether the revocation should be applied prospectively or retroactively. Generally, revocation of a determination letter is prospective. Rev. Proc. 2008-4, 14.02 (cross-referencing 13.01 et seq.). Revocation of a determination letter may, however, be retroactive if the organization omitted or misstated a material fact or operated in a manner materially different from that originally represented. Regulations 601.201(n)(6)(i); Rev. Proc. 90-27, 14.01; Rev. Proc. 2008-4 14.02 (cross-referencing 13.01 et seq.).

In cases where the organization omitted or misstated a material fact, revocation may be retroactive to all open years under the statute. Regulations 601.201(l)(1). In cases where revocation is due to a material change, inconsistent with exempt status, in the character, the purpose, or the method of operation, revocation will ordinarily take effect as of the date of the material change. Regulations 601.201(n)(6)(i); Rev. Proc. 90-27. In any event, revocation will ordinarily take effect no later than the time at which the organization received written notice that its exemption ruling or determination letter might be revoked. Regulations 601.201(n)(6)(i).

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

Under certain circumstances, however, the Commissioner may, in his discretion grant relief from retroactive revocation under I.R.C. 7805(b) of the Code. Section 7805(b)(8) of the Internal Revenue Code provides:

**APPLICATION TO RULINGS.** The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws, shall be applied without retroactive effect. Section 301.7805-1(b) of the regulations delegates authority granted by I.R.C. 7805(b) to the Commissioner (or the Commissioner's delegate).

To request I.R.C. 7805(b) relief, the organization must submit a statement in support of this application of I.R.C. 7805(b), as described in Rev. Proc. 2008-4, 14.02. See also Rev. Proc. 2008-5, 19. The organization's statement must expressly assert that the request is being made pursuant to I.R.C. 7805(b). The organization's statement must also indicate the relief requested and give reasons and arguments in support of the relief requested. It must also be accompanied by any documents bearing on the request. The organization's explanation and arguments should discuss the five factors bearing on retroactivity listed in Rev. Proc. 2008-4, 14.02(1) (cross-referencing 13.05), as they relate to the situation at issue. These five items are, in effect, the same as the factors provided in Regulations 601.201(l)(5) and 601.201(m), Statement of Procedural Rules, which states:

Except in rare or unusual circumstances, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such a ruling if:

1. there has been no misstatement or omission of material facts;
2. the facts at the time of the transaction are not materially different from the facts on which the [determination letter] was based;
3. there has been no change in applicable law;
4. the [determination letter] was originally issued for a proposed transaction; and
5. the taxpayer directly involved in the [determination letter] acted in good faith in reliance upon the [determination letter] and revoking or modifying the [determination letter] retroactively would be to the taxpayer's detriment.

If relief is granted under I.R.C. 7805(b), the effective date of revocation of a determination letter is no later than the date on which the organization first received written notice that its exemption might be revoked. Regulations 601.201(n)(6)(i); Virginia Education Fund v. Commissioner, 85 T.C. 743, 7522-3 (1985), aff'd 799 F.2d

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

903 (4<sup>th</sup> Cir. 1986). This does not preclude the effective date of revocation being earlier than the date on which the organization first received written notice that its exemption might be revoked. Virginia Education Fund v. Commissioner, 85 T.C. at 753.

The Supreme Court has held that the Commissioner has broad discretion under I.R.C. 7805(b) (and its predecessor) in deciding whether to revoke a ruling retroactively. Automobile Club of Michigan v. Commissioner, 353 U.S. 180, 184 (1957). See also Dixon v. United States, 381 U.S. 68, 74-75 (1965). The Commissioner's determination is reviewable by the courts only for abuse of that discretion. Virginia Education Fund v. Commissioner, 85 T.C. 743, 752 (1985).

It is the Service's position that the activities of the organization have changed dramatically compared to the organizing documents above. If the organization would seek exemption now, based on its current activities, there is a very high probability it would not receive a determination letter from the Service granting tax exempt status under IRC 501(c)(15). The insurance activities that were conducted when the organization applied for exemption are no longer being conducted.

Therefore, it is appropriate for the Commissioner to NOT grant relief from retroactive revocation of determination letter.

4. If cannot rely on the determination letter granted by the Service allowing it to claim tax exempt status pursuant to under Internal Revenue Code Section 501(c)(15), what is the effective date of the revocation?

is not entitled to relief under I.R.C. 7805(b). The effective date of revocation should be for years beginning January 1, 20XX. This is the first year under examination.

5. If cannot rely on the determination letter granted by the Service allowing it to claim tax exempt status pursuant to Internal Revenue Code Section 501(c)(15), based on the facts that it does not meet the requirements of an insurance company under Internal Revenue Code Section 501(c)(15), what are the tax consequences?

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

Since tax exempt status should be revoked for years beginning January 1, 20XX, would be responsible for filing Forms 1120 for years beginning January 1, 20XX.

IRC 831 discusses tax on insurance companies other than life insurance companies.

IRC 831(a) states as a general rule, "Taxes computed as provided in section 11 shall be imposed for each taxable year on the taxable income of every insurance company other than a life insurance company."

IRC 831(b) provides an alternative tax for certain small companies. It states in IRC 831(b)(1) that, in general, "In lieu of the tax otherwise applicable under subsection (a), there is hereby imposed for each taxable year on the income of every insurance company to which this subsection applies a tax computed by multiplying the taxable investment income of such company for such taxable year by the rates provided in section 11(b)."

IRC 831(b)(2) discusses the companies to which this subsection applies.

- (A) In general. This subsection shall apply to every insurance company other than life (including interinsurers and reciprocal underwriters) if-
- (i) the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed \$1,200,000, and
  - (ii) such company elects the application of this subsection for such taxable year.

The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (1) are met. Such election, once made, may be revoked only with the consent of the Secretary.

Regulations (Regs.) 301.9100-8(a)(2) discusses the time for making elections. Under (i) it states in general that except as otherwise provided in this section, the elections described in paragraph (a)(1) of this section, must be made by the later of-

- (A) The due date (taking into account any extensions of time to file obtained by the taxpayer) of the tax return for the first taxable year for which the election is effective, or
- (B) January 22, 1990 (in which case the election generally must be made by amended return)

Regs. 301.9100-8(a)(1) mentioned above includes IRC 831(b)(2)(A).

Regs. 301.9100-8(a)(3) describes the manner of making elections. It states, " Except otherwise provided in this section, the elections described in paragraph (a)(1) of this

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

section must be made by attaching a statement to the tax return for the first taxable year for which the election is to be effective."

Based on the Code and Regulation sections above, is not entitled to the relief under IRC 831(b), for 2006, because it did not meet the requirements of Regs 301.9100-8(a)(2), and therefore would be required to report all income and expenses on Form 1120 for each year. As of this writing, the election has never been filed, either with the filing of the Form or separately. When an election is filed, it would only allow the organization to receive relief under IRC 831(b) in the year it is filed and all future years. The election would not be retroactive to any prior years.

Therefore, would be responsible for filing Form 1120 for years beginning January 1, 20XX and the election under IRC 831(b) would not be applicable until the election is made and for only the year it was made and subsequent years. The election can not be made retroactively.

#### **TAXPAYER'S POSITION**

Unknown at the time of this writing

#### **SUMMARY**

It is the Service's position, based on the above facts, law and analysis, that the tax exemption status of for the years beginning January 1, 20XX should be revoked based on not operating as an insurance company, thereby failing to meet the qualifications for exemption under IRC 501(c)(15). Forms 1120 would be required to be filed for years beginning January 1, 20XX.